IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.2701 of 1982

Date of Decision: October 8, 2007

Jagan Nath .....Petitioner

Versus

Ram Lubhaya Sharma & another .....Respondents

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Arun Jain and Mr.Amit Jain, Advocates
for the petitioner.

Mr.Avnish Mittal, Advocate
for the respondents.

S. D. ANAND, J.

1. Respondent-Ram Lubhaya Sharma (hereinafter referred to as "the landlord") is owner of a double storeyed shop situated in Mitha Bazar, Jalandhar (hereinafter referred to as "the premises"). Respondent No.2 – Tribhawan Kumar Jain (hereinafter referred to as "the respondent-tenant") is in possession of the premises as a statutory tenant, on a monthly rent of Rs.25/-. Respondent-tenant is in arrears of rent for the last two years and four months' period preceding the institution of the petition on 20.12.1976. The respondent-tenant had also sublet the premises to the petitioner-tenant without the consent of the landlord. It was on plea of non-payment of rent and subletting that the respondent-landlord applied for the eviction of the

petitioner-tenant and also the respondent-tenant from the premises aforementioned. The plea did not find favour with the learned Rent Controller who declined the ejectment plea vide order dated 30.7.1980. In a judgment of reversal, the then learned Appellate Authority, Jalandhar allowed the eviction petition. It was held that the tender of arrears of rent made by petitioner-tenant was not valid as the finding was that it is the respondent-tenant who is in possession of the premises as a tenant. The plea of subletting was also upheld.

2. Petitioner-Jagan Nath is in revision.

3. The plea raised by the respondent-tenant was that it is he only who had been inducted into the premises as a tenant and that he continues to hold that capacity. The petitioner-tenant also re-iterated that plea.

4. In support of the finding that it is tenant-respondent No.2 who had been inducted into the premises as a tenant, the learned Appellate Authority relied upon rent note (Exhibit A1) and money order coupons (Exhibits A2 to A52). It is vide aforementioned money order coupons that the respondent-tenant had been sending rent to the landlord for the period 2.11.1961 to 11.1.1968. The learned Appellate Authority declined to attach any importance to the entries in the municipal house tax record. It was observed, in the context, that those entries are not sufficient to prove the relationship of landlord and tenant between the parties. Though the learned Appellate Authority noticed that the landlord had not specifically mentioned (in the original application or in the replication) that initially Jagan Nath was the tenant of the shop since the year 1955 or he had yet surrendered the tenancy in the year 1961 and, thereafter, his nephew Tribhawan Kumar was inducted as tenant, it refused to draw any adverse

inference against the landlord in the face of the context of rent note, Exhibit A1. It was further held by the learned Appellate Authority that though the landlord had testified on oath that the petitioner-tenant had executed rent note in his favour, no adverse inference was drawable against him (landlord) on account of the non-production of the original rent note.

5. The learned counsel for the petitioner-tenant argued that the findings recorded by the learned Appellate Authority deserve to be invalidated in view of the fact that the Appellate Authority has not recorded reasons adequate enough to invalidate the findings recorded by the learned Rent Controller.

6. As would be evident from a perusal of the ejectment application, the respondent-landlord nowhere pleaded that respondent-tenant Tribhawan Kumar had surrendered tenancy in favour of petitioner-tenant Jagan Nath. In that view of things, the evidence adduced by the landlord qua surrender of possession by Jagan Nath to Tribhawan Kumar cannot be looked into.

7. As would be evident from the perusal of the testimony of AW1 Shri Ram Sarup, Deed-Writer, he made a record-based statement to the effect that he had scribed the original rent note, Exhibit A1, at the instance of Tribhawan Kumar Jain son of Banarsi Dass and that the contents thereof had been read over to the parties; that Tribhawan Kumar aforementioned put his signatures on the document after admitting its contents to be correct and that Ram Lubhaya had also signed it. He also testified on oath that he had brought along his original register (on the date he was examined by the Rent Controller) and that the relevant entry pertaining to the scribing of rent note at Serial No.1140. It is to be noticed that only one question was

put to him in his cross-examination and, in response thereto, he testified that copy mark 'A' (of his deed-writer register) had been prepared by him "according to the register entry". Thus, it is apparent that his testimony with regard to the execution of rent note Exhibit A1 by Tribhawan Kumar, respondent-tenant in favour of the landlord was not challenged in the course of the cross-examination. In so far as Tribhawan Kumar is concerned, he did not step into the witness box to make a testimony on oath. There is, thus, no escape from the confusion that it is Tribhawan Kumar who was inducted into the premises, as a tenant, by the respondent-landlord. There is another additional reason that militates against the plea of surrender. The averment made by the landlord is that the respondent-tenant was in arrears of rent when he allegedly surrendered the tenancy. If that were so, there was no earthly reason for which the landlord would have been inclined to accept the induction of a relation of the tenant in arrears as a tenant.

8. It is apparent from the record that the tender of arrears of rent had been made by petitioner Jagan Nath on the premise that he is the tenant on the premises. That plea has been negatived. No tender was made by Tribhawan Kumar who has been found to have been inducted into the premises as a tenant. In that view of things, the only obvious finding is that respondent Jagan Nath is liable to be evicted from the premises, on account of non-payment of rent for the period for which a claim had been made by the landlord.

9. In so far as the plea of subletting is concerned, the learned Appellate Authority recorded adequate reasoning to uphold it. The detail discussion appears in para 12 of the judgment. In the course thereof, the learned Appellate Authority declined to place reliance upon Exhibits R2 and

R3 which are copies of the property register of the Municipal Committee pertaining to the year 1960 to 1965 and 1965 to 1967. The finding recorded is that those entries by themselves are not sufficient to record a finding in favour of tenant-petitioner to the effect that his possessory title in respect of the premises was as a tenant. I have no reasons to differ with the line of reasoning adopted by the learned First Appellate Authority to record a finding that it is the respondent-tenant Tribhawan Kumar who is the original tenant and who had sublet it to his uncle i.e. petitioner Jagan Nath.

10. In the light of foregoing discussion, the finding recorded by the learned Appellate Authority on point of eviction due to non-payment of rent and subletting shall stand affirmed.

11. The petitioner-tenant being in possession of the premises on the basis of subletting cannot resist eviction in his individual capacity. The petitioner-tenant and the respondent-tenant are given two months' time from today to vacate the premises.

12. The revision petition stands disposed of.

(S. D. ANAND)
JUDGE

October 8, 2007
SRM

Note: Whether referred to reporter ? Yes/No